

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA**

In the Matter of the Eligibility of:

CLAIMANT

and

INLAND REGIONAL CENTER, Service Agency

OAH No. 2023040104

System Tracking No. CS0003956

DECISION

Alan R. Alvord, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference and telephone on May 16, 2023.

Claimant did not appear at the hearing.

Keri Neal, Fair Hearing Representative, represented Inland Regional Center (IRC).

Oral and documentary evidence was received. The record was closed, and the matter was submitted for decision on May 16, 2023.

ISSUES

Is claimant eligible for regional center services under the Lanterman Developmental Disabilities Services Act (Lanterman Act) as a result of autism spectrum disorder (autism), an intellectual developmental disability, or a disability closely related to an intellectual developmental disability or that requires treatment similar to that required for individuals with an intellectual disability (the "fifth category"), that constitutes a substantial disability?

SUMMARY

Claimant did not establish that she is eligible for regional center services under a diagnosis of autism, or under any of the other eligible conditions. Claimant's appeal of IRC's determination that she is not eligible for services is denied.

FACTUAL FINDINGS

Jurisdictional Matters

1. Claimant submitted an intake application and associated documents to IRC in January 2023. On March 23, 2023, IRC issued and sent to claimant its Notice of Action notifying claimant that IRC determined claimant was not eligible for regional center services, and that no further intake services were warranted.

2. On March 25, 2023, claimant submitted an appeal request.

3. On April 4, 2023, OAH issued Notices of Videoconference or Telephonic Hearing and Mediation. The notices were served on claimant by electronic service at

the email address she provided to OAH. The notices were properly served as required. This hearing followed.

4. Claimant did not appear at the hearing. The service agency presented its evidence.

Claimant's Application for Eligibility

5. Claimant is a 27-year-old female. She asserted she was eligible for services based on autism. Her application stated that she has experienced ableism at work in the past and would like to better self-advocate. She stated she is,

not interested in full-on masking my disability but would like to learn some useful skills I can use in the workplace. I want to be a teacher, I already earned my bachelor's degree with the support of my on-campus disability services.

6. A question on the application asked about medications used in the past. Claimant responded, "Lexapro (Misdiagnosed Panic Attacks – 10mg – x1 day – Was Sensory Overload/Autistic."

7. The application asked if there has been a diagnosis of autism spectrum disorder by a health care professional. Claimant responded "yes." She named the diagnosing professional as Gaea Umali, NP. When asked at what age the concerns began, claimant replied, "13 (in many psych appt. since)."

8. In response to a checklist of behavioral characteristics, claimant checked unusual fears, sleeping difficulties, self-stimulatory behaviors, poor eye contact, repetitive movements, bed wetting (over 5 years old), interested in things, not people, and "other: Trichotillo I pulled my hair."

9. A question asked to describe concerns about the applicant's language. The response: "She had advanced literary skills from a young age and was tracked for GATE and participated in spelling bees. She had a hyper fixation on letters but struggled with numbers (because of dyscalculia, which also came from me, her mother [sic]."

10. A question on the application asked for developmental milestones during early childhood. In the application, claimant reported she rolled over at six months, sat alone at 12 months, crawled at nine months, walked at 11 months, spoke first words at 12 months, and toilet trained at 24 months.

11. Another question asked to describe concerns with the applicant's social interaction. The response: "Struggles with social cues; difficulty maintaining eye contact and listening at the same time; difficulty understanding when to 'pass the ball' in conversation or when to speak; repeats stories/words/phrases; unknowingly; infodumps about special interests and doesn't know when someone is interested; was often bullied as a child and in the workplace and at university for autistic traits."

12. In response to questions about possible intellectual developmental disability, cerebral palsy, and epilepsy, claimant answered "no." To a question about other disabling conditions (fifth category), claimant provided no response.

Diagnostic Criteria for Autism Spectrum Disorder

13. The *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition Text Revision*, (DSM-5-TR) contains the diagnostic criteria that must be met to make a diagnosis of autism. To be eligible for regional center services based on autism spectrum disorder, a claimant must meet that diagnostic criteria. The criteria include: persistent deficits in social communication and social interaction across multiple

contexts; restricted, repetitive patterns of behavior, interests, or activities; symptoms that are present in the early developmental period; symptoms that cause clinically significant impairment in social, occupational, or other important areas of current functioning; and disturbances that are not better explained by intellectual developmental disorder (formerly called “intellectual disability”) or global developmental delay. The DSM-5-TR does not require formal testing; the diagnostic criteria may be found “currently or by history.”

Expert Witness Testimony

14. Ruth Stacy, Psy.D., is a staff psychologist at IRC. She received a Bachelor of Arts degree from California Baptist University in 1978, a Master of Arts in Sociology from California State University, Chico, in 1980, a Master of Arts in Counseling Psychology from Trinity College in 2004, and a Doctor of Psychology (Psy.D.) from Trinity College in 2008. She has been licensed as a Clinical Psychologist in California since 2013. She has worked at IRC in several capacities, including a consumer services coordinator, senior counselor/intake, and has been a staff psychologist since 2015.

15. Dr. Stacy reviewed claimant’s records and participated on the eligibility team that made the decision concerning claimant’s eligibility for services.

16. Dr. Stacy testified that the records did not show signs of autism spectrum disorder that manifested before age 18, and that is substantially disabling.

17. Claimant graduated from the University of California, Riverside. The records showed that claimant received accommodations in college, but a person can receive accommodations without a qualifying diagnosis for regional center services. The accommodations were for generalized anxiety and dyscalculia.

18. During a telemedicine appointment on July 20, 2022, when claimant was 26 years old, Nurse Practitioner Gaea Umali noted the chief complaint from claimant "I made this appointment because I have adult autism." NP Umali listed symptoms of depression, anxiety, panic attack, agoraphobia, "PTSD symptoms: the patient experienced a traumatic event that was described as 'sexual abuse,'" and "History of being diagnosed with ADHD. Neuropsych [sic] testing confirmed ADHD diagnosis. Inattention; easily distracted."

19. NP Umali entered diagnoses of generalized anxiety disorder, agoraphobia with panic disorder, encounter for autism screening, and "autistic disorder." Dr. Stacy testified that there was no indication NP Umali reviewed or ordered any psychological testing or other standardized measures typically used to reach the diagnosis of autism. She testified that it is very unusual to have a diagnosis of autism by a nurse practitioner without any testing whatsoever. The best practice for diagnosing autism spectrum disorder requires obtaining information from multiple sources. It appears NP Umali's only source of information was claimant's self-report.

20. Dr. Stacy testified that it is uncommon for a person with a qualifying diagnosis of autism spectrum disorder to be able to graduate from a school in the University of California system. This shows that claimant does not have the type of functional limitations that would qualify as substantially disabling.

21. Dr. Stacy opined that claimant's reported autistic-like behaviors can be a "bleed over" from anxiety disorder. People with anxiety sometimes have difficulty with eye contact and social interactions.

22. Dr. Stacy testified that, although there is some indication that claimant received special accommodations in college, there was no record of special education

services in elementary, junior high, or high school. Based on the application, claimant's early developmental milestones appeared typical.

23. Other than the single nurse practitioner record, other medical records for claimant showed no indication of autism spectrum disorder or a substantially disabling condition.

24. Based on these records, the eligibility team concluded that there was no evidence of a developmental disability before age 18. The autism diagnosis by a nurse practitioner at age 26 had no testing to support it. Even if there had been a diagnosis of autism by a qualified professional, there was no evidence that claimant has significant functional limitations that would qualify as substantially disabling. There was no history of cognitive impairment. Claimant was gainfully employed as a waitress and is presently employed as a personal assistant to an artist. There was no evidence claimant received employment services from the Department of Rehabilitation. That she self-initiated the regional center application and sought a medical appointment to receive a qualifying diagnosis shows she does not have deficits in self-direction. There was no evidence of independent living deficits.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. In a proceeding to determine eligibility, the burden of proof is on the claimant to establish he or she meets the proper criteria. The standard of proof is a preponderance of the evidence. (Evid. Code, § 115.)

Statutory and Regulatory Authority

2. The Lanterman Act is set forth at Welfare and Institutions Code section 4500 et seq.

3. Welfare and Institutions Code section 4501 states:

The State of California accepts a responsibility for persons with developmental disabilities and an obligation to them which it must discharge. Affecting hundreds of thousands of children and adults directly, and having an important impact on the lives of their families, neighbors and whole communities, developmental disabilities present social, medical, economic, and legal problems of extreme importance . . .

An array of services and supports should be established which is sufficiently complete to meet the needs and choices of each person with developmental disabilities, regardless of age or degree of disability, and at each stage of life and to support their integration into the mainstream life of the community. To the maximum extent feasible, services and supports should be available throughout the state to prevent the dislocation of persons with developmental disabilities from their home communities.

4. Welfare and Institutions Code section 4512, subdivision (a), defines "developmental disability" as follows:

“Developmental disability” means a disability that originates before an individual attains 18 years of age; continues, or can be expected to continue, indefinitely; and constitutes a substantial disability for that individual. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term shall include intellectual disability, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to intellectual disability or to require treatment similar to that required for individuals with an intellectual disability, but shall not include other handicapping conditions that are solely physical in nature.

5. California Code of Regulations, title 17, section 54000, provides:

(a) “Developmental Disability” means a disability that is attributable to mental retardation, cerebral palsy, epilepsy, autism, or disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation. (Note: The regulations still use the term “mental retardation,” instead of the term “Intellectual Disability.”)

(b) The Developmental Disability shall:

(1) Originate before age eighteen;

(2) Be likely to continue indefinitely;

(3) Constitute a substantial disability for the individual as defined in the article.

(c) Developmental Disability shall not include handicapping conditions that are:

(1) Solely psychiatric disorders where there is impaired intellectual or social functioning which originated as a result of the psychiatric disorder or treatment given for such a disorder. Such psychiatric disorders include psycho-social deprivation and/or psychosis, severe neurosis or personality disorders even where social and intellectual functioning have become seriously impaired as an integral manifestation of the disorder.

(2) Solely learning disabilities. A learning disability is a condition which manifests as a significant discrepancy between estimated cognitive potential and actual level of educational performance and which is not a result of generalized mental retardation, educational or psycho-social deprivation, psychiatric disorder, or sensory loss.

(3) Solely physical in nature. These conditions include congenital anomalies or conditions acquired through disease, accident, or faulty development which are not associated with a neurological impairment that results in a need for treatment similar to that required for mental retardation.

6. California Code of Regulations, title 17, section 54001, provides:

(a) "Substantial disability" means:

(1) A condition which results in major impairment of cognitive and/or social functioning, representing sufficient impairment to require interdisciplinary planning and coordination of special or generic services to assist the individual in achieving maximum potential; and

(2) The existence of significant functional limitations, as determined by the regional center, in three or more of the following areas of major life activity, as appropriate to the person's age:

(A) Receptive and expressive language;

(B) Learning;

(C) Self-care;

(D) Mobility;

(E) Self-direction;

(F) Capacity for independent living;

(G) Economic self-sufficiency.

(b) The assessment of substantial disability shall be made by a group of Regional Center professionals of differing disciplines and shall include consideration of similar

qualification appraisals performed by other interdisciplinary bodies of the Department serving the potential client. The group shall include as a minimum a program coordinator, a physician, and a psychologist.

(c) The Regional Center professional group shall consult the potential client, parents, guardians/conservators, educators, advocates, and other client representatives to the extent that they are willing and available to participate in its deliberations and to the extent that the appropriate consent is obtained.

(d) Any reassessment of substantial disability for purposes of continuing eligibility shall utilize the same criteria under which the individual was originally made eligible.

Applicable Case Law

7. The Lanterman Act and implementing regulations clearly defer to the expertise of the Department of Developmental Services and regional center professionals and their determination as to whether an individual is developmentally disabled. General, as well as specific guidelines are provided in the Lanterman Act and regulations to assist regional center professionals in making this difficult, complex determination. (*Ronald F. v. State Department of Developmental Services* (2017) 8 Cal. App. 5th 84, 94–95, citations omitted.)

Evaluation

8. The Lanterman Act and the applicable regulations set forth criteria that a claimant must meet in order to qualify for regional center services. The documents and Dr. Stacy's expert testimony introduced in this hearing do not demonstrate that claimant has a diagnosis of autism that constitutes a substantial disability. There was no evidence claimant has any of the other categories of developmental disabilities that qualify her for regional center services. Although the documents show claimant does have other emotional and psychiatric conditions, none of them are conditions that qualify claimant for regional center services.

Moreover, IRC's role is to assess individuals for eligibility for services based on a qualifying developmental disability. IRC performs this role by reviewing records and, when necessary, performing evaluations. In cases, like this one, where the records do not indicate the individual has a qualifying developmental disability, a records review is sufficient and an evaluation need not be performed.

ORDER

Claimant's appeal from IRC's determination that she is not eligible for regional center services is denied. IRC's determination that she is not eligible for regional center services is affirmed.

DATE: May 23, 2023

ALAN R. ALVORD

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision. Each party is bound by this decision. Either party may request a reconsideration under Welfare and Institutions Code section 4713, subdivision (b), within 15 days of receiving the decision, or appeal the decision to a court of competent jurisdiction within 180 days of receiving the final decision.